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Calcutta High Court

Case No: Civil Rule No. 3784 of 1975

Nripendra Mohan Ghosh Chowdhury		APPELLANT
	Vs	
Tripti Rani Chakraborty		RESPONDENT

Date of Decision: July 7, 1976

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- West Bengal Premises Tenancy Act, 1956 - Section 13(1), 17, 17(1), 17(2), 17(2A)

Citation: (1976) 2 ILR (Cal) 359

Hon'ble Judges: Chittatosh Mookerjee, J

Bench: Single Bench

Advocate: R.P. Bagchi and S.S. Roy, for the Appellant;G.C. Pal, for the Respondent

Judgement

Chittatosh Mookerjee, J.

The Defendant tenant obtained the present Rule against the order of the learned Munsif, First Additional Court, Alipur, disposing of his two applications under Sub-section (2) and (2A) of Section 17 of the West Bengal Premises Tenancy Act, 1956. The Petitioner has also challenged the subsequent order of the learned Munsif rejecting the Defendant''s petition u/s 151 of the Code of Civil Procedure.

2. Mr. Bagchi, the learned Advocate for the Petitioner, has submitted before me that, in the instant case, the learned Munsif has acted illegally by directing the Defendant tenant to deposit an amount equivalent to rent for 51 months commencing from April 1960. According to Mr. Bagchi, the Court had no jurisdiction under Sub-sections (2) and (2A) to direct the Defendant tenant to deposit amounts of rent which had become barred by limitation at the date of the institution of the suit in question. In my view, this contention of Mr. Bagchi should be sustained. In fact, Mr. Pal, the learned Advocate for the opposite parties, did not dispute the well-settled principle that under Sub-section (1), (2) or (2A) time-barred rent need

not be paid or deposited. The rent which is are legally recoverable are liable to be deposited or paid under these provisions of law.

3. In the above view, it is not necessary for me to consider the next submission of Mr. Bagchi that the learned Munsif acted illegally and with material irregularity in the exercise of its jurisdiction by disallowing the Defendant tenant''s claim that he was entitled to adjust the costs of repairs of the premises allegedly incurred by him against the rent payable for the period from April 1960 to August 1960. At the date of the institution of the suit the rent for the period from April 1960 to August 1960 had become time-barred and therefore, it is unnecessary to determine whether the claim of the tenant for the adjustment of the costs allegedly incurred by him for effecting of repairs against the rent of the said period should be allowed or not.

4. I am unable to entertain the third submission of Mr. Bagchi regarding the finding of the trial Court that the deposits of rent made by the Defendant tenant in the office of the Rent Controller since September 1960 were invalid. In the instant case, the Defendant tenant had claimed in the Court below that he had orally tendered rent to the landlord for the month of September 1960, but the latter had refused to accept the same. The tenant further claimed that he had also remitted by money order rent for the month of September 1960, but the landlord had again refused to accept the same; thereupon he had commenced depositing rent in the office of the Rent Controller with effect from the month of September 1960. The learned Munsif has given reasons why he was unable to believe the said case of the Defendant. The learned Munsif has found that prima facie there has been no tender of rent either for the initial month of September 1960 or for any subsequent month. Upon these findings the learned Munsif held that all the deposits made by the Defendant tenant in the office of the Rent Controller were invalid and did not amount to payment of rent. The question whether there was any tender of rent preceding the deposit of rent for September 1960 in the office of Rent Controller was one of fact. Sitting in revision, I am not in a position to reappraise the evidence or to disturb the said finding of fact by the trial Court. If there was no valid tender, at least, for the initial month, all subsequent deposits in the absence of any further tender cannot be considered to have been validly made and the Defendant must be considered to have prima facie committed default in payment of rent within the meaning of Section 13(1)(i) read with Sections 21 and 22 of the West Bengal Premises Tenancy Act, 1956.

5. Mr. Bagchi lastly, submitted before me that the Court below committed error of jurisdiction by directing the Defendant tenant to pay interest upon the arrear rent which the Defendant tenant was liable either to pay or to deposit in terms of Sub-section (2). In the instant case, the Defendant simultaneously prayed for granting instalments to pay arrear rent u/s 17(2A)(b) of the West Bengal Premises Tenancy Act. 1956. I may at once point out that, under proviso to Section 17(2A)(b) the amount permitted to be deposited by instalments must include all amounts

calculated at the rate of rent for the period subsequent thereto up to the end of the month previous to that in which the order u/s 17(2A)(b) is to be made with interest on any such amount calculated at the rate specified in Sub-section (1) from the date when such amount was payable up to the date of such order. Thus, the proviso to Section 17(2A)(b) expressly stipulates payment of interest upon the amount to be deposited by instalments.

6. At one stage Mr. Bagchi contended that in that event his client might consider about not pressing his application u/s 17(2A) of the Act but would pray for disposal of his application u/s 17(2) of the Act. According to Mr. Bagchi, at least, Section 17(2) does not contemplate awarding of any interest on the amount finally determined as payable or to be deposited under Clause (b) of Section 17(2) of the Act. In my view, there is no substance in this contention.

7. Under Sub-section (2) of Section 17 a tenant may raise a dispute within the prescribed time as to the amount of rent payable by him and until the determination of the said dispute a tenant obviously is not liable to deposit the amount of rent in dispute, but at the same time Sub-section (2) enjoins that together with an application u/s 17(2) the tenant shall deposit within the time specified in Sub-section (1) of Section 17 ''the amount admitted by him to be due from him''. Under Clause (a) of Sub-section (2) the Court is to make a preliminary order pending final decision of the dispute specifying the amount, if any, due from the tenant. Clause (b) of Sub-section (2), inter alia, provides as follows:

having regard to the provisions of this Act make, as soon after the preliminary order as possible, a final order determining the rate of rent and the amount to be deposited in Court or paid to the landlord and either fixing the time within which the amount shall be deposited or paid or, as the case may be, directing that the amount already deposited or paid be adjusted in such manner and within such time as may be specified in the order. It is significant to note that Clause (b) uses the expression ''the amount to be deposited or paid''. In my view, the said expression ''amount'' in Section 17(2)(b) comprises all sums which the tenant would be otherwise required to deposit or pay under Sub-section (1) of Section 17 but for raising a timely dispute under Sub-section (2). A tenant who raises dispute under Sub-section (2) is not obliged to deposit the disputed amount in terms of Sub-section (1). Under the first part of Sub-section (1) ''the amount'' consist of (i) the sum calculated at the rate of rent at which it was last paid for the period in default and also for the period subsequent thereto up to the end of the month previous to that on which the deposit or the payment is made and (ii) interest calculated in the manner laid down upon the sum finally determined by an order passed u/s 17(2)(b). Once the dispute under Sub-section (2) is finally determined by an order passed u/s 17(2)(b) the Court is required to call upon the Defendant tenant to deposit or pay the outstanding arrear rent together with the interest due therein. In my view, the amount mentioned in Sub-section (2)(b) clearly means the composite sum consisting of the

arrear rent together with the rent due for the period subsequent thereto up to the end of the month previous to that in which the order u/s 17(2) is made together with the interest calculated in the manner laid down in Sub-section (1). It may be pointed out that the Legislature while providing for deposit of admitted arrear rent under Sub-section (2) also uses the same expression ''the amount admitted by him to be due from him. It is inconceivable that the Legislature intended that a tenant who does not raise any dispute would be bound to pay or deposit both arrear rent and interest u/s 17(1), but a tenant can escape payment of interest on such arrear rent by merely raising a dispute under Sub-section (2). In my view, the word ''amount'' appearing in Sub-section (2)(b) as having once elaborated the different components of the amount already stated should be ascribed the same meaning as that given in Sub-section (1). Presumably, Sub-section (1) required to be paid or deposited, the Legislature did not think it necessary to recapitulate the same in Section 17(2)(b). The identical ''expression'' which appears in different sub-sections of the same section should be given the similar meaning to avoid any inconsistency and absurdity which may otherwise result.

8. Mr. Bagchi has drawn my attention to the decision of N.C. Mukherji J. in Arun Kumar Chatterjee v. Karuna Rakshit (1974) 78 C.W.N. 572 (574). In the said ease the trial Court did not award interest on the amount to be deposited u/s 17(2) but by a subsequent order u/s 151 of the CPC had directed the Defendant tenant to deposit interest on amount determined u/s 17(2). N.C. Mukherji J. set aside the order u/s 151 observing that:

In the present case the Court considered all the circumstances of the case and thought it lit not to pass any order directing the Petitioner to deposit the interest. I am also of opinion that it was wrong on the part of the learned Munsif to hold that according to the provisions of Section 17(2) payment of interest at the statutory rate was mandatory. That being so, the learned Munsif was not justified in modifying the order-passed by his predecessor on 5.12.72 which order was duly complied by the Petitioner.

9. Thus, on the facts, the present case is distinguishable. The learned Munsif, in the instant case, by his order u/s 17(2)(b) thought it lit to award interest on the amount determined as arrear rent, further, N.C. Mukherji J. did not lay down as a general proposition that awarding of interest u/s 17(2) was totally prohibited, but he held that awarding of interest was not mandatory. In the above view, the said decision has no manner of application to the present case.

10. I, accordingly, make this Rule absolute in part. I set aside the order of the learned Munsif so far as he directed deposit of rent for the period which had become time-barred at the date of the institution of the suit. I discharge the Rule so far as the same relates to the direction for deposit of amount equivalent to arrear rent for the period of thirty six months calculated from the date of the institution of the suit and also for payment of interest due thereon. The Court below will now

calculate afresh the amount to be deposited and will also grant suitable instalments to the Defendant tenant to pay or deposit the same. The Court below will give credit to the Defendant tenant for the amounts deposited by him in terms of Section 17 of the Act.

11. There will be no order as to costs.

12. Let a copy of this order be communicated to the Court below.